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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 FRANK RALPH LaPENA,

10 Petitioner,

2:00-cv-0960-RFB-NJK

11 vs.

ORDER

12 GEORGE GRIGAS, *et al.*,

13 Respondents.
14 _____
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16 The petitioner, Frank Ralph LaPena, initiated this federal habeas corpus action by submitting a
17 petition for writ of habeas corpus for filing on August 3, 2000. *See* Petition for Writ of Habeas Corpus,
18 ECF No. 7. Respondents filed their answer on November 14, 2001 (ECF No. 40), and LaPena filed his
19 reply (entitled “Petitioner’s Partial Response in Opposition to Respondents
20 Answer that Petitioner’s Habeas Grounds Two-Three; Five-Six & Seven Are Unexhausted”) on
21 December 13, 2001 (ECF No. 57).

22 On July 24, 2002, the court dismissed the action on the ground that it was barred by the statute
23 of limitations (ECF Nos. 60, 67, 68). LaPena appealed, and, on October 20, 2003, the Ninth Circuit
24 Court of Appeals reversed and remanded, upon the State’s concession that the district court had not
25 considered the tolling effect, under 28 U.S.C. § 2244(d)(2), of all of LaPena’s state court post-conviction
26 litigation (ECF No. 77).

1 Following the remand, on March 15, 2004, LaPena filed a motion to supplement his habeas
2 petition (ECF Nos. 84, 85), which was denied. LaPena appealed from the denial of that motion, and that
3 appeal was dismissed on October 18, 2005 (ECF No. 117).

4 On April 5, 2006, after mail sent to LaPena had twice been returned to the court as undeliverable,
5 the court dismissed this action for failure to comply with the local rule requiring litigants to promptly
6 inform the court of any changes of their address (ECF Nos. 121, 122).

7 On June 12, 2007, LaPena filed a notice of change of address and a motion to reopen this case
8 (ECF Nos. 124, 125). That motion to reopen the case was denied on August 7, 2007 (ECF
9 No. 126).

10 On June 1, 2012, LaPena filed another motion to reopen this case (ECF No. 127). In support of
11 that motion, LaPena submitted a copy of a file-stamped notice of change of address dated February 14,
12 2005; LaPena asserted that he found that conformed copy of his notice of change of address after
13 throwing away many of his legal files. It then appeared to the court likely that a clerk's error resulted
14 in the failure to properly file LaPena's notice of change of address, and, in turn, in the dismissal of this
15 case. Therefore, on January 15, 2013, the court granted LaPena's second motion to reopen the case
16 (ECF No. 134).

17 On May 12, 2014, the court issued an order (ECF No. 136), identifying three claims -- Grounds
18 5, 6, and 7 -- in LaPena's petition that are unexhausted in state court, and the court ordered LaPena to
19 make an election regarding those unexhausted claims. On May 15, 2014, LaPena filed a notice of
20 abandonment of his unexhausted claims (ECF No. 137).

21 That leaves Grounds 1, 2, 3, 4, 8, 9, and 10, of LaPena's habeas petition, apparently to be
22 adjudicated on their merits.

23 The briefing of LaPena's claims was completed in 2001, and, then, resolution of this case was
24 delayed as a result of the events outlined above. The court will, therefore, grant the parties an
25 opportunity to supplement their briefing to take account of any relevant changes in the law over the past
26 13 years.

1 **IT IS THEREFORE ORDERED** that respondents shall have 60 days, from the date of entry
2 of this order, to file a “Supplemental Answer.” Petitioner shall then have 60 days, following the service
3 of the Supplemental Answer, to file a “Supplemental Reply.” Neither the Supplemental Answer nor the
4 Supplemental Reply shall exceed 30 pages in length.

5 Dated this 29th day of July, 2014.

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UNITED STATES DISTRICT JUDGE